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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 12 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a civil engineer. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a personal statement, continuing to mischaracterize much of the evidence submitted. For the reasons discussed below, we uphold the director's decision.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Engineering from the University of New Hampshire. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the

Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We do not contest that the petitioner works in an area of intrinsic merit, construction material quality control, and that the proposed benefits of his work, improved interstate highway construction, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. At issue is whether the alien employment certification process should be waived in the national interest because the petitioner would benefit the national interest to a greater extent than an available U.S. worker who is also qualified for the job. Given the repeated assertions of several of the petitioner's references, it is significant that the alien employment certification process does not require an employer to settle for an available U.S. worker who is not sufficiently qualified for the job.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important

that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Initially, the petitioner submitted what he claims are two "books," one in English and one in Chinese. In his initial statement, the petitioner asserted:

> The groundbreaking nature of my research is shown in its being selected for publication either separately in book form or in other professional publications in the field. [Exhibit numbers omitted.] It is worth noting that those publications appear in either Chinese or English, the two most widely used languages in the world. As a result, my scientific contributions have reached a much wider audience in the scientific community than those of others published in only one language.

The "books," however, while bound, are not books published by a commercial publisher. They bear no indicia of commercial publication, such as a publishing company, copyright date or ISBN number. The bound manuscripts are, in fact, the petitioner's Ph.D. and Master's dissertations. The petitioner's bound copy of his Ph.D. dissertation bears the original signatures of his dissertation committee members. An original dissertation is a requirement for an engineering advanced degree and does not set the petitioner apart from other Ph.D. recipients. Without evidence that these bound manuscripts have been disseminated and utilized to some degree in the field, they do not demonstrate any influence in the field.

The petitioner also submitted what purports to be published material about him relating to his work in the field. The documents include a newsletter published by [redacted] at the University of New Hampshire that mentions the petitioner as a graduate student working with [redacted] on the project [redacted] and a newsletter from the [redacted] welcoming its new members, including the petitioner. Mention as a graduate student in a newsletter published by the university where the petitioner was studying does not establish the petitioner's influence in the field. Similarly, inclusion in a list of new members is not published material about the petitioner and cannot demonstrate his influence in the field.

In addition to documenting his membership in NCSBCS, the petitioner also documented his membership in the American Society of Mechanical Engineers (ASME) and his student membership in the American Society of Civil Engineers (ASCE), including membership in the society's Transportation and Development Institute. Professional memberships are merely one of the regulatory categories of evidence for which a petitioner must submit evidence to establish eligibility as an alien of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). By statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. Section 203(b)(2) of the Act; *NYSDOT*, 22 I&N Dec. at 218. Thus, even if the petitioner had demonstrated that these memberships are indicative of a degree of expertise significantly above that ordinarily encountered in the sciences, the regulatory standard for that classification as set forth at 8 C.F.R. § 204.5(k)(2), the memberships would not warrant a waiver of the alien employment certification process in the national interest. *NYSDOT*, 22 I&N Dec. at 218, 222.

The petitioner also submitted evidence of academic scholarships, research assistantships and academic honors. The translations of the foreign language academic honors are not certified as required under 8 C.F.R. § 103.2(b)(3) and, thus, those documents have no evidentiary value. Regardless, the record lacks evidence that these academic honors are indicative of the petitioner's influence in the field. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. *Id.* at 219, n.6.

The petitioner submitted his proposal for alkali silicate reaction (ASR) mitigation using lithium in existing pavement structures but no evidence that this proposal was published or adopted. While the petitioner also submitted quarterly reports listing [redacted] as the principal investigator, these reports do not appear to mention the petitioner by name and do not reflect on the petitioner's personal influence in the field.

The petitioner presented his work as a poster at [redacted] As evidence of "citation," the petitioner submitted a list of poster presentations at that meeting posted on [redacted] Inclusion in a list of poster presentations that includes all of the poster presentations from the meeting, is not a "citation." Rather, citations are understood to be footnoted references to the petitioner's work in peer-reviewed journals or other notable publications and can be useful evidence of the petitioner's influence if they demonstrate reliance on the petitioner's work in the field as a whole. While the petitioner continues to assert on appeal that this listing constitutes a "citation" by a government entity, we concur with the director that the record contains no evidence of citation.

The petitioner asserts on appeal:

> [T]he number of citations alone is no basis on which to judge the degree of influence of a scientist and engineer in the field. That is apparently why there is no specific mention of it in the Immigration and Nationality Act or other laws and government regulations regarding the matter.

We acknowledge that citations are not required evidence. That said, it is still the petitioner's burden to demonstrate his influence on the field as a whole. In the absence of citations, the petitioner must provide other objective and credible evidence of that influence. The petitioner further asserts on appeal that the necessarily subjective opinions of experts in the field are more reliable than citations and "should definitely carry more weight." The petitioner continues that because "the law and regulations have consistently emphasized and often relied on expert's opinions, it is wrong to dismiss them in my case by refusing to recognize them as 'objective documentary evidence.'" The petitioner cites no specific law or regulation that emphasizes reliance on expert opinion over other evidence. That said, we will review the reference letters below.

At the outset, we must note that some of the letters in the record contain at least some common phrases, such as: "It is a pity that [the petitioner's] abilities and achievements as outlined above cannot be effectively reflected through the labor certification process." This use of boilerplate language in the reference letters from different individuals suggests that while the authors are affirming the information in the letters with their signature, the language is not their own. Moreover, as will discussed below, the letters are primarily conclusory with few supporting examples of the petitioner's influence in the field. USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. (D.C. Dist. 1990).

[redacted], a former graduate student at the University of New Hampshire while the petitioner was also studying at that institution, asserts that the petitioner's study of coatings in China was applied in [redacted] water supply pipeline. [redacted] makes a similar assertion. Neither [redacted] explains how he has first hand knowledge of the application of the petitioner's work in China. The record contains no confirmation of this application of the petitioner's work in China from officials in China. [redacted] further asserts that the petitioner contributed to [redacted] to calculate structural reliability under different combinations of general loads and extreme events. While [redacted] asserts that this program has contributed to public safety, [redacted] asserts only that this project "strives to ensure public safety and minimize adverse effects resulting from bridge collapse by providing specifications and designing procedures based on uniform reliability." Once again, neither [redacted] nor [redacted] explains his first hand knowledge of this work and the record lacks letters from independent engineers confirming their use of the petitioner's [redacted].

[redacted] discusses the petitioner's work with [redacted] mitigation in recycled concrete funded by [redacted] notes that the petitioner evaluated the effect of applying lithium nitrate on the mitigation of the distresses caused by [redacted] on slabs from Route I-95 in Maine. While [redacted] speculates that this work "will definitely lead to longer service life of existing pavements," he does not provide any examples of the petitioner's work being investigated or applied outside of his immediate circle of colleagues.

[redacted] continues that the petitioner used recycled materials such as fly ash, slag and silica as effective [redacted] mitigation agents, working towards successfully developing a detailed mix design procedure to make concrete that uses recycle aggregate and lasts as long as traditional concrete. [redacted] speculates:

> The result of this project will not only provide a solution to disposal of waste materials and related environmental issues but also produce enormous economic benefits by substituting natural aggregate with recycled aggregate. It will pave the way for many more projects at [redacted] to promote the use of waste materials in civil engineering.

[redacted] speculation of broad general benefits at some point in the future is insufficient. [redacted] does not provide any examples of government agencies or civil engineering firms applying or considering applying the petitioner's detailed mix design procedure or any other specific examples of the petitioner's influence in the field.

[redacted] notes that much of the petitioner's Ph.D. research was funded by the U.S. Federal Highway Administration. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

Other references currently or formerly affiliated with the University of New Hampshire, including [redacted] provide mostly generalized and conclusory statements about the petitioner's influence in the field without providing examples of specific accomplishments that have demonstrably influenced the field at the national level. For example, [redacted] asserts that the petitioner collected field data, conducted in-situ tests, performed structural integrity analysis, evaluated [redacted] reaction potential, performed strength and durability tests and evaluated concrete field cores for future [redacted] expansion potential. [redacted] does not explain, however, how this work is being applied in the field. [redacted] merely lists the petitioner's projects, concluding that the petitioner's research on [redacted], if its goal is realized, "can save maintenance costs" and "will not only provide a solution to disposal of waste materials and related environmental issues but also produce enormous economic benefits by substituting natural aggregate with recycled aggregate." [redacted] further concludes that this work "will pave the way for many more projects at [redacted] to promote the use of waste materials in civil engineering as well." These statements are highly speculative and [redacted] does not support his conclusions with examples of state transportation departments or private engineering firms across the United States utilizing the petitioner's results to transition to the use of recycled aggregate.

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[1] While [redacted] is currently at the [redacted] his curriculum vitae indicates that he was a graduate student at the [redacted] during the petitioner's studies at that institution.

[redacted], a materials lab supervisor at the Massachusetts Highway Department, explains the petitioner's duties at that department. Specifically, [redacted] asserts:

> As a Civil Engineer in the Department, [the petitioner] has responsibilities which include conducting construction materials quality control to make sure that every bridge or road material is tested before use. [The petitioner's] many years of education and work experience make him a very exceptional and important member of the engineering staff at the Department. The skills he acquired in different research institutions around the world enable him to play an irreplaceable role in many research projects he has been engaged in and ensure success in his current position.

Experience and education are qualifications that can be enumerated on an application for alien employment certification. Moreover, extensive experience and education are two categories of evidence that can establish exceptional ability, a classification that normally requires an approved alien employment certification. Section 203(b)(2) of the Act. Evidence pertaining to exceptional ability, therefore, is not grounds for waiving that requirement. *NYSDOT*, 22 I&N Dec. at 218, 222. Finally, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

In a second letter, [redacted] asserts that the petitioner's "versatility" is exemplified by the institutions where he has been employed. We will not infer the petitioner's influence in the field from his affiliation with prestigious institutions. Rather, he must demonstrate his influence. [redacted] Bautista continues that the petitioner "made a name for himself" through his graduate work at the University of New Hampshire. [redacted] notes that [redacted] is a "national center" that represents a collaboration between the University of New Hampshire, other universities and the Federal Highway Administration. [redacted] concludes that the petitioner played "a critical and indispensable role" on [redacted] based on the fact that the petitioner's photograph appears on an RMRC report. [redacted], an engineer at Gandhi Engineering where the petitioner now works, makes a similar assertion.

The internal [redacted] report is not evidence of the petitioner's influence in the field. In discussing the project's progress, the report lists the determination[redacted] and the petitioner "are trying" to make and the tests that "will" be performed. The report does not suggest that the project has already produced useful results being applied beyond the University of New Hampshire. [redacted] subsequent speculation that the petitioner's work "is bound to have a significant influence on future generations of engineer[s] in the field," strongly suggests that it has yet to do so. Finally, while [redacted] discusses the Massachusetts Highway Department and asserts that the petitioner "was able to fulfill his many responsibilities and help bring [the department's] work to a new level of excellence," he fails to provide any examples of specific projects or how those projects have impacted the field at the national level.

The director concluded that the above letters were from the petitioner's immediate circle of colleagues. On appeal, the petitioner challenges this characterization, asserting "some of the letters were written by people beyond my past and present education institutions and circle of colleagues." As an example, the petitioner notes that [redacted] works at the Virginia Department of Transportation, where the petitioner has never worked. [redacted] however, was a graduate student at the University of New Hampshire while the petitioner was also studying there. While letters from the petitioner's immediate circle of colleagues are useful in explain the nature of the petitioner's work, they cannot, by themselves, typically demonstrate the petitioner's influence in the field at a national level.

The opinions of experts in the field are not without weight and have been considered above. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of recognition for contributions without providing specific examples of how those contributions have already influenced the field. Merely repeating the language of the legal requirements does not satisfy the petitioner's burden of proof.[2] The petitioner also failed to submit persuasive corroborating evidence, which could have bolstered the weight of the reference letters.

Ultimately, the petitioner challenges the director for noting the absence of citations and letters from independent sources. While we concur with the petitioner that neither form of evidence is necessarily required, the petitioner did not submit any comparable evidence that might demonstrate his influence in the field beyond his immediate circle of colleagues. Rather, the facts of this case appear analogous with those in *NYSDOT*, 22 I&N Dec. at 215, a civil engineer working for the New York Department of Transportation on the roads and bridges of that state with no demonstrated influence beyond that state.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job

[2] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.